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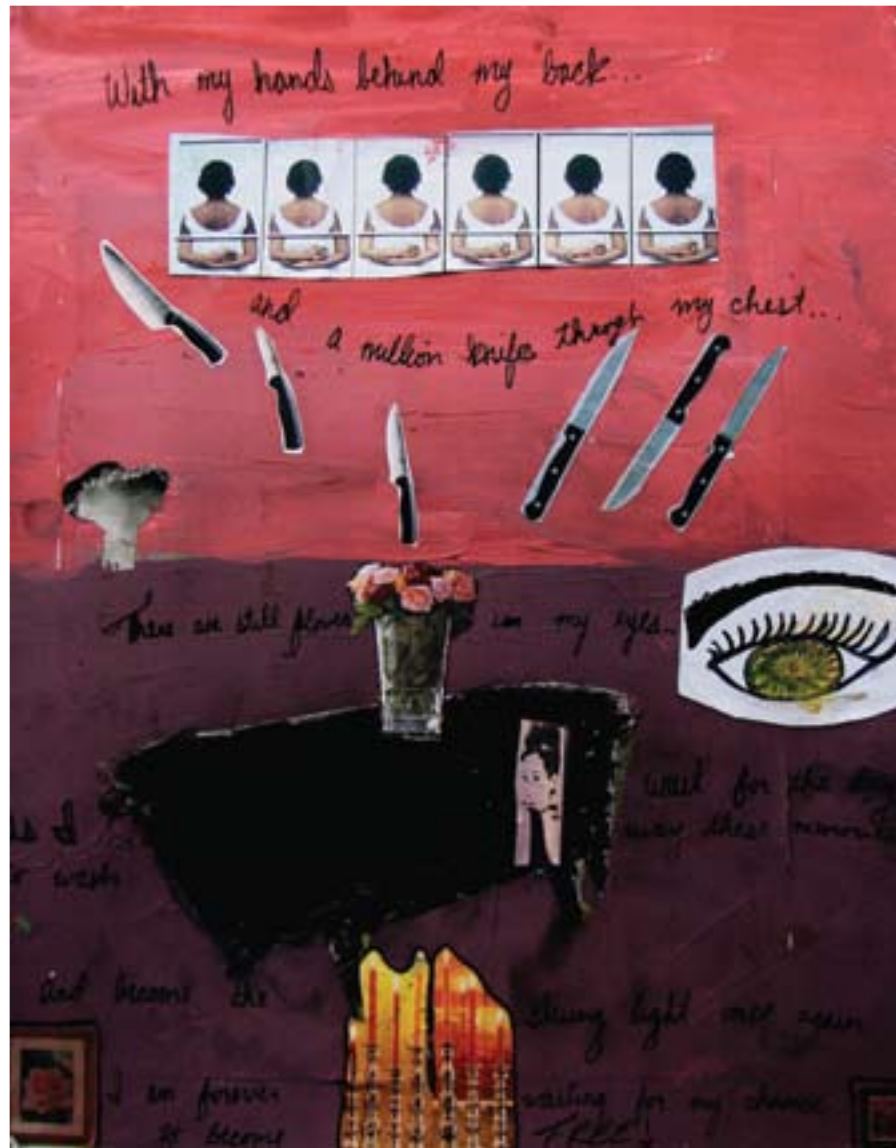
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Reframing the Response: Girls in the Juvenile Justice System and Domestic Violence

By Francine T. Sherman



*With my hands behind my back
And a million knives through my chest
There are still flowers in my eyes
As I wait for the day to wash away these memories
And become the shining light I once was
I am forever waiting for my chance to be FREE!*

—Jasmine T., Age 15

In 1992, the Juvenile Justice and Delinquency Prevention Act, the federal legislation most directly influencing state juvenile justice policy, mandated that states analyze and plan to deliver gender-specific treatment and prevention services.¹ Since that time, research on the needs of girls in the juvenile justice system and gender-responsive approaches to addressing those needs has increased dramatically. We have learned that childhood trauma, family chaos, mental and physical health issues, and educational failure are all associated with delinquency in girls. Moreover, we are discovering that, in addition to contributing to delinquency, these needs can also become system triggers that pull girls who are victims of trauma into the juvenile justice system.

Juvenile justice policy has moved in cycles reflecting ongoing tension between its dual goals—social welfare and social control. The juvenile justice system, along with the child welfare system, began with an exclusive focus on social welfare, exercising authority as *parens patriae* to protect youths whose parents were unable or unwilling to do so. Young people involved with crime were categorized along with neglected and abused youths as in need of the guidance of the court and its related services. However, over the last century public protection, through accountability measures such as incapacitation and punishment, has been increasingly competing, and at times overtaking, social welfare as a guiding principle for juvenile justice systems.

Nevertheless, state juvenile justice purpose clauses continue to reflect the social welfare origins of juvenile justice. Many retain the original language of rehabilitation, describing a system of “...care, custody and discipline of children...,” one that “...approximate(s) as nearly as possible that which they should receive from their parents...(and treats them)... not as criminals but as children in need of aid, encouragement, and guidance.”² More recently, state purpose clauses have adopted a modern iteration of this theme in the restorative justice concept of promoting individual competencies. Despite these clearly stated goals, however, the mechanics of the juvenile court and juvenile justice system—detention, probation, warrants, waiver, disposition—are largely designed to hold juveniles accountable and enforce the criminal laws, but not to treat the trauma or illness which often underlies delinquent behavior. This accountability orientation is the wrong framework to address the constellation of needs and strengths common among system-involved girls.

The experience of girls in the juvenile justice system illustrates how ill-suited the prevailing accountability model is for youths who have significant needs but pose little threat to public safety and how laws, policies, and practices can sweep the most vulnerable into that system. Their experience also illustrates the potential for strengths-based, contextual frameworks, such as Positive Youth Development, to organize integrated systems that capitalize on youths’ resiliencies.

A PROFILE OF GIRLS IN THE JUVENILE JUSTICE SYSTEM

The connection between trauma and later delinquency is well-established and particularly significant for girls. Recent research, building on findings from the late 1980s,³ confirms the link between childhood trauma and future delinquency, finding high rates of trauma and family chaos in the profiles of girls in the delinquency system.⁴ Although the connection between childhood

trauma and later delinquency is present for boys as well, it is particularly striking for girls who are more often victims of sexual abuse and who are less likely than boys to be violent in the absence of childhood trauma. Girls’ experiences of trauma, including domestic violence, are predictive of involvement in health risk behaviors and delinquency.⁵

For girls, family chaos and later delinquency are further connected by findings that girls in the delinquency system more often have parents convicted of a crime, siblings who are institutionalized, and multiple out-of-home placements. Out-of-home placements are connected to girls’ histories of abuse and neglect, which result in foster care and residential placements.⁶ The significant overlap of girls in both the child welfare and delinquency systems has been attributed to the shared risk factors of trauma and family chaos as well as to system issues such as the lack of communication between child welfare systems and the police, probation, or juvenile court.

While both boys and girls in the juvenile justice system have high rates of mental illness, substantial research shows that these girls have higher rates of mental illness than their male counterparts. In particular, system-involved girls suffer from post-traumatic stress disorder, depression, and anxiety disorders.⁷

The connection between girls’ trauma and their involvement in the delinquency system has multiple levels. Trauma is related to mental health issues, for which the juvenile justice system is the system of last resort. Moreover, trauma leads girls to risk-taking behaviors, which in turn result in delinquency. An additional and sometimes overlooked part of the equation is the system responses themselves which play a role in criminalizing girls who are trauma victims.

THE ROLE OF GENDER IN JUVENILE JUSTICE PROCESSING

Although the proportion of girls arrested and entering the juvenile justice system has increased over the last two decades, arrest patterns for girls continue to differ from those of their male counterparts. In 2006, prostitution and running away continued to be the only two offenses for which girls comprised the majority of juvenile arrests (74% of arrests for prostitution and 57% of arrests for running away). The next greatest share of girls’ arrests included property offenses such as embezzlement (45% of arrests) and larceny-theft (41% of arrests). While girls comprised 17% of arrests for violent crime in 2006, this was largely due to arrests for aggravated assault (23% of juvenile arrests). In 2006, girls comprised approximately one-third of juvenile arrests for crimes such as liquor law violations, driving under the influence, disorderly conduct, and curfew violations.⁸

Along with these differing arrest patterns, detention is utilized differently for girls than for boys. In 2006, 41% of detained girls were held for technical violations (violating rules of probation or parole) or status offenses (behavior that would not be an offense for an adult), as compared with 26% of boys. The over-use of detention for girls with significant needs but minor crime is facilitated, but not excused, by the role of detention at the front end of the juvenile justice process, to hold pre-adjudicated youths without the requirement of a finding of delinquency. At the back end of the juvenile justice process, once a delinquency finding is required, the percentage of girls committed for technical violations or status offenses is

Editor’s note: Artwork and poetry is used with permission of H.U.M.A.N. (Here Us Make Artistic Noise). H.U.M.A.N. gives girls confined in the juvenile justice system an opportunity to document their lives and experiences using visual art. More information is available at www.human-design-online.com.

reduced somewhat to 32% of all girls committed. However, the gender difference remains, with the share of girls' commitments for technical violations and status offenses almost twice that of boys (32% of all girls versus 17% of all boys).⁹

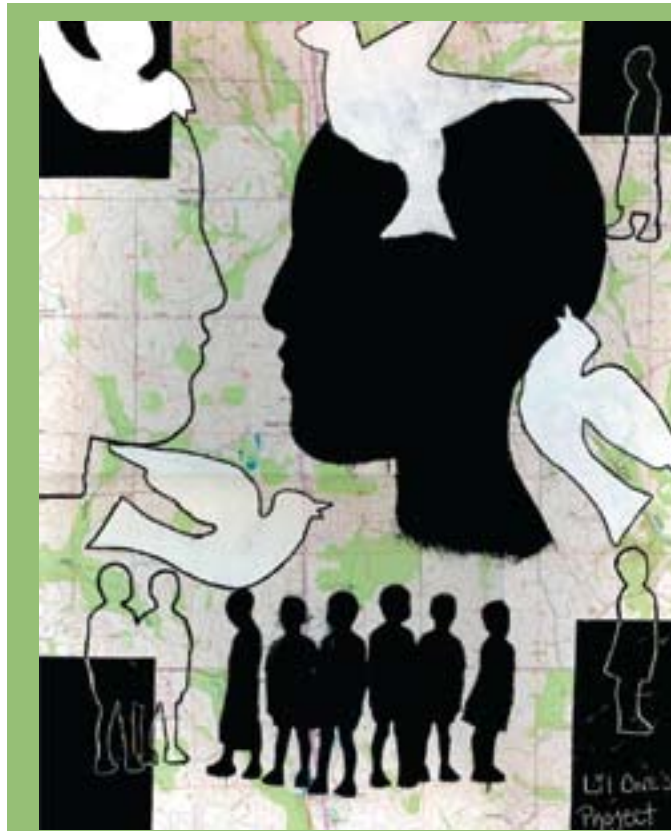
Although more research is needed to understand the correlates of delinquency, arrest, and detention utilization for girls, existing research suggests that these gender differences are in part the result of efforts by juvenile justice decision makers to protect girls. That protective impulse reflects gender bias as it sweeps girls into the system for more minor offenses than boys and triggers heightened responses to girls' failures to comply once in the system.¹⁰

This effort to protect is behind "bootstrapping" in which status offenses, which alone cannot result in locked confinement, become delinquency through probation violations, contempt, and charging decisions. Essentially, a girl brought into court on the status offense of running away or disobeying her parent, is told to

illustrates the way laws are being applied to the detriment of vulnerable girls in this case by sweeping girls into the juvenile justice system as perpetrators when they are actually the victims of abuse, neglect, and domestic violence.

ASSAULT, DOMESTIC BATTERY, AND GIRLS

While girls' proportion of violent offenses has remained relatively low compared to their male counterparts (accounting for 11% of burglary arrests, 10% of arrests for weapons offenses, 9% of robbery arrests, and 5% of murder arrests in 2006),¹² their arrests for simple and aggravated assault have increased significantly in the past decade. This increase is particularly striking in comparison to boys. From 1996 to 2005, girls' arrests for simple assault increased 24% while boys' arrests declined 4%; girls' arrests for aggravated assault declined 5.4% while boys' arrests declined 23.4%. Overall arrests of girls for violence remained stable in relation to boys



No Father

I was always told that I have no father. That the one I've known all my life was just a donor. It's his fault I can't sleep. When I was little I had to hide under the sheets, because I tired of seeing my mother get beat. One day he disappeared and never came back. I was made to believe he was dead. To this day I still see my mother get hit and I can't get that out of my head. So now I still have no father to hug. Just my beautiful mother to care for until the day she's gone.

—Kassandra, Age 13

obey a curfew, report to probation, and attend school regularly as conditions of her probation. When she violates her curfew or runs away again, she is held in detention for a violation of court order, contempt, or AWOL, thereby bootstrapping the delinquency offense onto the underlying misbehavior. Alternatively girls can be charged with minor delinquency, such as disorderly conduct, for status type behaviors, allowing their detention and processing in the delinquency system.

Although these practices are consistently criticized, and bootstrapping has been found to violate law in some states, they remain commonplace ways in which juvenile courts and probation seek to control girls' behaviors. While courts need to be able to enforce their orders, girls often run and act out in response to family chaos and abuse; therefore, criminalizing this behavior penalizes girls for their attempts at survival without addressing the underlying family circumstances.¹¹

The increase in arrests of girls for assault over the last decade

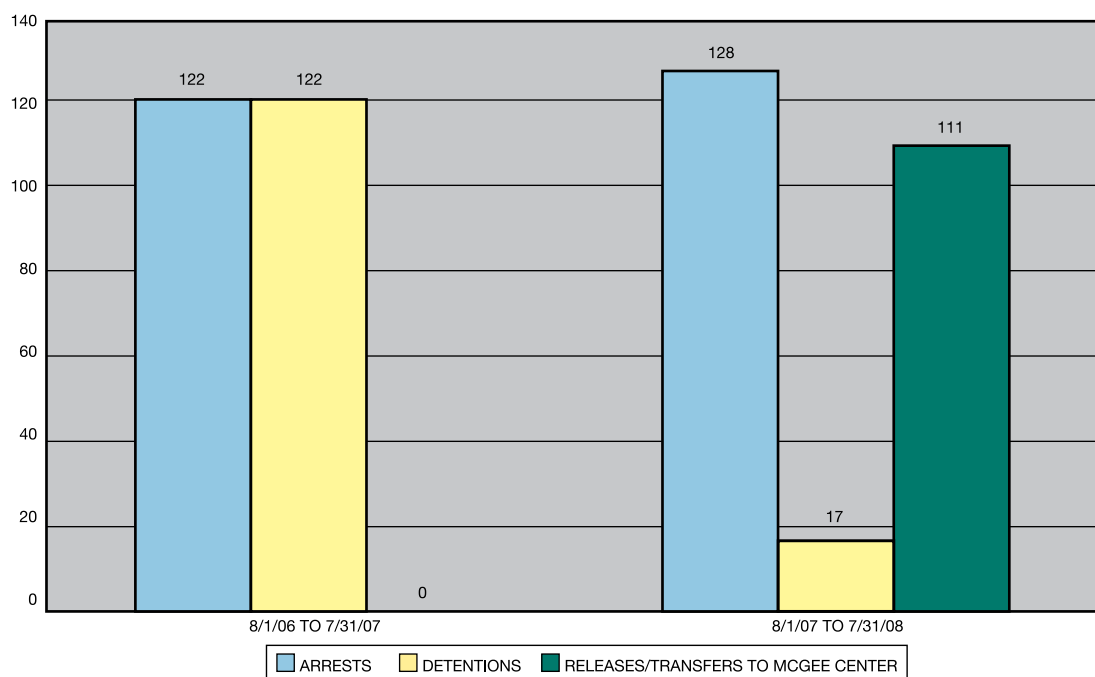
except for arrests for assault.¹³ A similar gender difference was seen in assault arrests among adults. Between 1997 and 2006, adult male arrests for aggravated assault fell 14% while adult female arrests fell 2%; adult male arrests for simple assault fell 10% while adult female arrests rose 8%.¹⁴

These data have led observers to question the notion that girls are "getting more violent" and look for explanations linked to gender roles and law enforcement practices.

A recent report commissioned by the Office of Juvenile Justice and Delinquency Prevention concluded that the increase in arrests of girls for assault over the past decade was in large part a reflection of changed enforcement and increased visibility of domestic violence cases, which is sweeping in girls whose violence often occurs in the home.¹⁵ In support of this conclusion, the report notes:

- The ratio of simple assault arrests is much higher for girls than for boys indicating that girls' violence is of a less serious nature than boys;

WASHOE COUNTY, NEVADA FEMALE DOMESTIC BATTERY ARRESTS AND DETENTIONS



Source: Washoe County Department of Juvenile Justice (2008)

- Arrests of girls for assault increased during this time but arrests of girls for other violent offenses did not;
- Trends in female self-reported assault over the same time period remained stable;
- Victim-reported assaults over the same time period showed no difference between male and female trends, both of which dropped in recent years.¹⁶

The study offers a contextual explanation noting that changes in law enforcement policies and social services responses to domestic violence have coincided with the increase in arrests of girls for assaults. It points to a lowered threshold for reporting and classifying behavior as assault and to zero tolerance policies in schools, which result in arrests for behavior that was not formerly subject to arrest; both give the impression of an increase in assaults.¹⁷

Notably, the report cites shifts over the past decade in a number of practices related to domestic violence which have had a disproportionate and unintended impact on girls. While both boys' and girls' violence is most often perpetrated against same-sex peers, the second most common victim of girls' violence is a family member. In fact, one study found girls three times as likely as boys to assault a family member, often their mother.¹⁸ Thus, less discretion and stricter enforcement of domestic violence laws is likely to disproportionately affect girls. A number of states and localities have adopted mandatory arrest or mandatory hold policies in cases of domestic disturbance. Moreover, family violence, which formerly might have been referred to family services, is now more likely to be handled by law enforcement as a domestic disturbance. The result is net-widening—more cases are classified within domestic violence laws and those laws have become stricter and more criminal in nature.

NEVADA'S DOMESTIC BATTERY REFORMS

These findings came to life recently when two counties in Nevada discovered that girls were being disproportionately and

inappropriately affected by a Nevada statute which required a 12-hour mandatory hold in secure detention for any child charged with domestic battery.

As part of their efforts to reform detention practices and reduce the inappropriate use of secure detention, Washoe and Clark counties reviewed all detention data for girls. Both counties discovered that a significant number of girls were being detained for domestic battery and that the impact of the law fell disproportionately on girls. In 2006 in Clark County (Las Vegas), girls comprised 22% of overall detentions but 43% of detentions for domestic battery; in Washoe County (Reno), girls accounted for 28% of all detentions but 40% of detentions for domestic battery. In Washoe County, 69% of all girls' person-offense detentions in 2006 were for domestic battery.¹⁹

Law enforcement described responding to domestic disturbances involving multiple family members, including parents, but routinely charging the teenager rather than the parent because there were younger children in the home who required a parent to be present. In these cases, the girl was not necessarily more culpable, she was simply more convenient.

Moreover, although the Nevada statute required a 12-hour hold, girls' average length of stay in detention for domestic battery was longer. Once a girl was detained, she remained in detention for the judicial detention hearing, and as a result of processing delays, continued to be detained for an average of 8 days.²⁰ Moreover, while the girls were detained, few if any services were mobilized to address the domestic violence behind the initial charges, so when the girl was returned home she was returned to a chaotic family in which the violence was not addressed.

As a result of the efforts of a coalition of Nevada's juvenile justice departments, law enforcement agencies, and the domestic violence community, the Nevada state legislature amended this law effective August 2007. The new law requires a youth arrested for domestic battery to be released unless he or she otherwise qualifies

for detention. Moreover, the law favors provision of family services to maintain the child in the home and respite or other out-of-home alternative if needed to protect the child from injury.²¹

The amended law has allowed a revised approach to youths involved in domestic disturbance. In the year after the law became effective, Washoe County detained 13% of girls charged with domestic battery as compared with 100% in the preceding year (see chart on page 19). Moreover, the amended law is providing the impetus to strengthen family services, including respite care and family counseling, and to restructure case management to better assess and serve the complex needs of girls and their families.

INCORPORATING POSITIVE YOUTH DEVELOPMENT

The accountability response for girls involved in domestic violence or for girls who run away from chaotic families penalizes them for their attempts to survive, criminalizing their efforts to assert control over chaotic home lives. The accountability response also exclusively targets the girl for legal and service interventions, allowing systems to ignore needs within the family and community which contribute to domestic violence and family chaos. Finally, the accountability response reflected in common juvenile justice interventions, such as detention, revictimizes girls who have already suffered trauma.

Positive Youth Development (PYD), which has been gaining traction as a framework for juvenile justice since the mid-1990s, offers an ecological approach to youth services with a goal of helping young people grow into successful adults. PYD recognizes that the spheres in which youths develop have positive as well as negative elements. A PYD approach promotes those positive elements, fostering youths' strengths in their families, communities, and society rather than focusing disproportionately on their deficits. Common goals of juvenile justice PYD programming would be promoting healthy family and peer relationships, developing leadership skills, job training, and promoting civic engagement. To achieve these goals, a juvenile justice system organized around PYD would be integrated with other child-serving and public health systems to promote strengths and resiliency factors in youths' families and communities.²² This strengths-based frame is a challenge to the

prevailing treatment and accountability models in juvenile justice. Yet, it fits girls in the juvenile justice system well because much of girls' offending is linked to family, community, and societal issues.

For example, PYD might re-frame a "domestic battery" case as a girl's attempt to survive, and running away as her attempt to exert control over a chaotic family situation. PYD might be incorporated into the front-end of juvenile justice systems through diversion, designed to move a youth whose charges arise in the family context out of the justice system and provide family services designed to address the issues creating the context for the offense and support the youth's social supports so she has safe alternatives.

Pima County, Arizona's Domestic Violence Outreach Center (DVOC) is an example of this sort of innovation. The DVOC is an effort to address cases of youths charged with domestic violence related crimes more comprehensively outside of the accountability mechanisms of traditional juvenile justice. The Center works as a partnership among law enforcement, juvenile court, probation, and child protective and mental health services. It strives to identify community resources to address the individual and family issues central to domestic violence charges thus diverting the youth from detention and the formal juvenile justice system.

CONCLUSION

Girls who have experienced significant trauma and family chaos are being swept into the delinquency system as an unintended consequence of juvenile justice laws, policies, and practices. Yet that system, based largely on an accountability model, is poorly designed to address these girls' needs and foster their strengths. Although institutional impediments to a PYD framework throughout juvenile justice systems are great, it offers a positive, forward-looking alternative to the accountability model and is a good fit for girls whose delinquency must be understood in family, community, and societal contexts.

ABOUT THE AUTHOR

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END NOTES

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⁶ *Supra* note 4.

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¹³ Zahn, M. et al. (2008). *Violence by teenage girls: Trends and context*. Washington, DC: U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention.

¹⁴ *Supra* note 8.

¹⁵ *Supra* note 13.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Sherman, F. (2007). Nevada amends domestic battery hold for juveniles, *JDAI News*. Annie E. Casey Foundation.

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